(02)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH : AT JABALPUR.

CRIMINAL APPEAL NO. 367 /1996.

Amratlal alias Ammilal son of Ramgulal Yadav, aged 40 years, Resident of Village: Hardi, Police Station Sakti, District: Bilaspur (MP).

... APPELLANT
In Jail

Vs.

State of Madhya Pradesh

... RESPONDENT

2979

22.2.96
B.S. Chauhan
Advocate

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE.

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मामला क्रमांक ..... G.A. 367/96 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. D.R. DESHMUKH, JJ.

16-11-2005

Mr. Abhay Kumar Tiwari, counsel for the appellant.

Mr. Ravindra Agrawal, Panel Lawyer for the State/respondent.

Oral judgment.

By this appeal under Section 374 (2) of the Cr.P.C. the accused/appellant has questioned the legality of the judgment of conviction and sentence dated 23-1-1996 passed by the Additional Sessions Judge, Sakti, in Sessions Trial No.78/1994, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the I.P.C. for committing the murder of Roopkunwar Bai, sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 11-10-1993 at 1.30 p.m. Phool Sai appeared before Police Station: Sakti and informed that "today he was returning to his village from Sakti at about 12 noon, when he was between Saraipali & Godhi, Santram Sahu met him on the way and informed him not to go to village and said that Amritlal Yadav has committed the murder of your wife and mother with the sword". Santram Sahu further said that he is going to village, "you go and report the matter to the Police", that is why he is reporting the matter. Phool Sai further stated that the accused used to call his wife witchcraft and on account of

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that on many occasions, he quarreled with her. On receiving this report, the Station House Officer, Police Station, registered the first information report Ex.P-12 and proceeded towards the scene of occurrence. After reaching the scene of occurrence, he prepared the Panchanama of the body Ex.P-4 and sent the body of Roopkunwar Bai for post-mortem to the Primary Health Centre, Sakti, where Dr. P.R. Dewangan (PW-5) conducted the post-mortem on the body of Roopkunwar Bai and prepared the post-mortem report Ex.P-2. He also prepared the site plan of the place of occurrence Ex.P-6. While in policy custody, the accused/appellant gave information under Section 27 of the Indian Evidence Act, Ex.P-9, in pursuance of that, the appellant got recovered the sword, weapon of offence, and same was taken into possession by the Investigating Officer under Ex.P-10. The Investigating Officer also took into possession the plain soil and blood stained soil from the place of occurrence Ex.P-13, and Lungi & shirt of the accused were also taken into possession under Ex.P-16.

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate, First Class, Sakti, who in turn committed the case for trial to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer. The prosecution in order to prove the offence against the accused/appellant examined 12 witnesses. Statement of the accused was recorded by learned Additional Sessions Judge under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is

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innocent and has been falsely implicated in the crime. He also examined one witness namely, Dorilal (DW-1) in his defence who has deposed that Phool Sai had murdered his mother. Learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced the accused as mentioned in the earlier part of this judgment.

We have heard Mr. Abhay Kumar Tiwari, learned counsel for the accused/appellant and Mr. Ravindra Agrawal, learned Panel Lawyer for the State/respondent.

Learned counsel for the appellant has not argued on the merit of the case, he simply argued that from the evidence it is clear that only one assault was made by the accused/appellant, therefore, no offence under Section 302 of the I.P.C. was made out against the accused/ appellant and the offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned Panel Lawyer Mr. Ravindra Agrawal argued that the manner in which the accused assaulted the deceased with a sword is sufficient to ascertain the intention of the accused that his intention was only to commit the murder of Roopkunwar Bai.

Having heard learned counsel for the parties, we have perused the evidence of the prosecution witnesses and the judgment of the trial Court.

The fact of homicidal nature of death of Roopkunwar Bai has not been disputed by learned counsel for the accused/appellant. Apart from

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that, from the evidence of Dr. P.R. Dewangan (PW-5) and the evidence of eyewitnesses namely, Yogesh Kumar (PW-4) & Ganeshi Bai (PW-8) it is established that the death of Roopkunwar Bai was homicidal in nature.

As far as the involvement of the accused/appellant in committing the murder of Roopkunwar Bai is concerned, Yogesh Kumar (PW-4) has stated that when his grand-mother came out from the house for going to take bath, at that time, the accused/appellant assaulted on the neck of her grand-mother as a result of which she fell down and blood started oozing out of the injury, his mother had already left for taking bath at the tank and after attacking his grand-mother, the accused also went towards the tank carrying the weapon in his hand. PW-4 Yogesh Kumar has further stated that he followed the accused towards the tank. At the tank, the accused attacked his mother also with the same weapon, which was witnessed by him. The witness also demonstrated before the Court by showing that the accused assaulted with the sword while holding it by both the hands and his brother Bharatlal also met him at the tank, from there both of them went to the school of village: Sirli and informed the teacher about the incident. Ganeshi Bai (PW-8) has also corroborated the evidence of this witness (Yogesh Kumar) and stated that she is the neighbour and she saw that the accused attacked Roopkunwar Bai with the sword. She has further stated that the accused/appellant attacked the deceased with the sword, Article 'A', which is present in the Court. This witness has further stated that at the time of incident Roopkunwar Bai was at the door

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of the house and she was also standing on the door of her house, at that time, the accused attacked Roopkunwar Bai with the sword on her neck and after that blood started oozing out of the injury, as a result of which Roopkunwar Bai fell down and died. In cross-examination of these eyewitnesses, counsel for the defence could not elicit any circumstance or fact, which makes the evidence of these two witnesses unreliable and untrustworthy.

Ganeshi Bai (PW-8) had all reasons to remain present at the scene of occurrence because she is the neighbour, she is an independent witness, and there is no reason to discard her evidence. The evidence of these two witnesses stand corroborated by the medical evidence and the post-mortem report Ex.P-2 according to which there was an incised wound on the left side of the neck of Roopkunwar Bai, left side of the mandible was found cut, cervical vertebra was also found cut, soft tissues, muscles, trachea were found cut and clotted blood was present. The above post-mortem report stands proved by PW-5 Dr. P.R. Dewangan who conducted post-mortem on the body of Roopkunwar Bai.

As far as the evidence of Dorilal (DW-1) is concerned, we are of the considered opinion that the trial Court has rightly rejected his evidence in view of the fact that even Phool Sai was not at his house, he had gone to Sakti and when he was returning from Sakti, on the way, he was informed about the incident by Santram Sahu (PW-2). In the circumstances, the

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evidence of this witness that Phool Sai committed the murder of his mother and grandmother cannot be accepted.

Therefore, in view of the evidence of these two eyewitnesses, the medical evidence and also that the sword in question, the weapon of offence, was recovered at the instance of the accused in pursuance of the information given under Section 27 of the Indian Evidence Act (Ex.P-9) and same has been proved by PW-12 Sanjay Tiwari, we are of the considered opinion that the finding of the trial Court regarding involvement of the accused/appellant in committing the murder of Roopkunwar Bai is based on legal and clinching evidence, and we do not find any illegality and infirmity in the same.

Now, coming to the question whether offence under Section 302 of the I.P.C. has been made out against the accused/appellant, looking to the medical and ocular evidence, we are of the considered opinion that the argument advanced by learned counsel for the accused/appellant has no merit for the reason that as per the ocular evidence, the accused/appellant attacked with the sword with full force while holding the same by both the hands. Moreover, the nature of injuries, which have been recorded in the post-mortem report, is self-sufficient to indicate the intention of the accused as all the vital organs of the neck, trachea, vertebra, muscles, vessels and mandible were found cut as a result of the assault made by the accused/appellant. The intention of the accused can be gathered from his conduct, nature of the injuries as well as part of the

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body where the accused attacked the deceased, the weapon of offence used by the accused i.e. the sword which itself is a very dangerous weapon, if any person assaults with full force while holding it with two hands, that too on vital parts like neck etc., it indicates the intention of the accused that he attacked the deceased only with the intention to cause his death. Therefore, the finding of the trial Court convicting the accused under Section 302 of the I.P.C. is also based on legal evidence and same does not require any interference by this Court.

In the result, we do not find any merit and substance in this appeal, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

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